



**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OPPT-2013-0579; FRL-9394-7]**

**Draft Guidelines; Product Environmental Performance Standards and Ecolabels for Voluntary Use in Federal Procurement; Notice of Availability and Request for Comments**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing for public review and comment draft Guidelines intended to provide a transparent, fair, and consistent approach to using non-governmental product environmental performance standards and ecolabels in Federal purchasing, consistent with Federal standards policy and sustainable acquisition mandates. These draft Guidelines have been developed in response to requests via a wide variety of stakeholder engagement channels from suppliers, manufacturers, environmental organizations, Federal purchasers, and other stakeholders over the last several years. Voluntary guidelines for standards and ecolabels would help agencies implement sustainable acquisition requirements of Executive Order 13514 and the Federal Acquisition Regulation (FAR) 23.103 which requires 95% of the government's applicable contract actions to be sustainable. Specifically, the Guidelines for standards and ecolabels could provide clarity regarding the term "environmentally preferable" for purposes of the Executive Order. In addition to seeking input on the draft Guidelines themselves, EPA is seeking input on how standards and ecolabels should be assessed for conformance to such guidelines. The proposed draft Guidelines and supplementary information can be found in the docket and at <http://www.epa.gov/epp/draftGuidelines>.

**DATES:** Comments must be received on or before *[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2013-0579, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460-0001.

- *Delivery:* OPPT Document Control Office (DCO), William Jefferson Clinton (WJC) East Bldg., Rm. 6428, 1201 Constitution Ave., N.W., Washington, DC. ATTN: Docket ID Number EPA-HQ-OPPT-2013-0579. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

- *Instructions:* Direct your comments to docket ID number EPA-HQ-OPPT-2013-0579. EPA's policy is that all comments received will be included in the docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or email. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA

recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

- *Docket:* All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, WJC West Bldg., 1301 Constitution Ave., N.W., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For information regarding environmentally preferable purchasing, contact:* Alison Kinn Bennett, Senior Advisor, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460-0001; telephone number: (202) 564-8859; email address: *kinn.alison@epa.gov*.

*For information regarding standards policy, contact:* Mary McKiel, Standards Executive, International Staff (7101M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460-0001; telephone number: (202) 564-0532; email address: *mckiel.mary@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Does this Action Apply to Me?**

This action is directed to the public in general. Although this action may be of particular interest to those persons who purchase or provide products and services for Federal agencies, developers of standards and ecolabels, and the manufacturers of products, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

### **II. Background**

#### *A. What Action is the Agency Taking?*

EPA is announcing for public review and comment draft Guidelines intended to assist the Federal workforce in more consistently utilizing non-governmental product environmental performance standards and ecolabels in the Federal procurement process, consistent with Federal standards policy and sustainable acquisition mandates.

Federal agencies must comply with the following sustainability-related purchasing mandates: section 2(h) of Executive Order 13514 (Federal Leadership in Environmental, Energy and Economic Performance), section 6002 of the Resource Conservation and Recovery Act, section 9002 of the Farm Security and Rural Investment Act of 2002, The Energy Policy Act,

section 2(d) of Executive Order 13423 (Strengthening Federal Environmental, Energy, and Transportation Management) (72 FR 3919, January 26, 2007), and the FAR, including FAR Part 23 (Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace) (see [http://www.whitehouse.gov/omb/procurement\\_index\\_green](http://www.whitehouse.gov/omb/procurement_index_green)).

Section 2(h) of Executive Order 13514 states that:

The Head of each Agency shall...advance sustainable acquisition to ensure that 95 percent of new contract actions including task and delivery orders, for products and services with the exception of acquisition of weapon systems, are...energy-efficient (Energy Star or Federal Energy Management Program (FEMP) designated), water-efficient, biobased, environmentally preferable (e.g., Electronic Product Environmental Assessment Tool (EPEAT) certified), non-ozone depleting, contain recycled content, or are non-toxic or less toxic alternatives, where such products and services meet agency performance requirements.

In addition, via the “National Technology Transfer and Advancement Act of 1995” (Pub. L. 104-113; hereinafter “the NTTAA”), Congress required Federal agencies to “use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities,” except when an agency determines that such use “is inconsistent with applicable law or otherwise impractical.” Office of Management and Budget (OMB) Circular A-119 (titled “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities”) reaffirms Federal agency use of non-governmental standards in procurement.

While Federal purchasing policy is clear for the several standards and ecolabels that are listed in statute, regulation, or Executive Order, the lack of guidance on using other product environmental performance standards and ecolabels often results in an inconsistent approach by Federal purchasers and confusion and uncertainty for vendors and manufacturers.

Therefore, in accordance with Federal obligations under the NTTAA and OMB Circular A-119 (see <http://www.standards.gov>), EPA is requesting comments on draft Guidelines that

could be used to select non-governmental product environmental performance standards and ecolabels for voluntary use in Federal procurement. Additionally, the Guidelines could provide clarity regarding the term “environmentally preferable” for purposes of Executive Order 13514, building upon EPA’s “1999 Final Guidance on Environmentally Preferable Purchasing” (see <http://www.epa.gov/epp/pubs/guidance/finalguidance.htm>) which defines “environmentally preferable” to mean products or services that “have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the product or service”.

As envisioned by EPA, guidelines for standards and ecolabels that would be used by the Federal government would not be applied to products directly or to government standards and ecolabels or to non-governmental standards and ecolabels that are already mandated for procurement via statute or Executive Order. Moreover, these draft Guidelines are not intended to discontinue or diminish procurement of products conforming to government standards and ecolabels. Existing mandates and government standards and ecolabels were influential in framing the draft Guidelines, especially guidelines regarding the environmental effectiveness of a standard’s criteria. These standards and ecolabels were later assessed for conformance with the draft Guidelines and found to align in principle (e.g., participatory process, transparency), considering the differences in administrative procedures of the government and of standards development organizations.

Rather, EPA envisions that non-governmental standards and ecolabels determined to be in conformance with the Guidelines would supplement existing mandates and government standards and ecolabels. [For illustration purposes, “product category x” has a recovered content minimum of 20% per the EPA Comprehensive Procurement Guidelines (CPG) (section 6002 of

the Resource Conservation and Recovery Act). A multi-attribute environmental performance standard for “product category x” is determined to conform to the Guidelines. Depending on the standard, Federal procurement officials could be informed that either (1) the non-governmental standard facilitates meeting the mandate (e.g., the standard includes the CPG requirement as a prerequisite) or (2) the non-governmental standard addresses important environmental considerations, but does not necessarily fully address the CPG requirement, so the standard could be specified in addition to the CPG requirement.]

*B. How Were These Draft Guidelines Developed?*

In 2011 and 2012, EPA and the General Services Administration (GSA) convened several listening sessions to solicit input regarding the Federal Government’s role in sustainability. A number of sessions were held following the release of the National Academy of Sciences report “Sustainability and the U.S. EPA.” Other sessions were held under the auspices of the Interagency Workgroup established by GSA per section 13 of Executive Order 13514: Federal Leadership in Environmental, Energy, and Economic Performance (74 FR 52117, October 8, 2009).

EPA heard some common themes from suppliers, manufacturers, environmental organizations, multi-stakeholder bodies, regulatory partners, and others. Key points included: (1) The desire for greater clarity in the marketplace regarding standards and ecolabels and (2) the opportunity to leverage the Federal Government’s purchasing power toward sustainability goals.

The Interagency Workgroup developed an initial set of draft Guidelines and contracted with Big Room Inc. (developers of [www.EcoLabelIndex.com](http://www.EcoLabelIndex.com)) to test the feasibility and appropriateness of the draft Guidelines. Big Room Inc. conducted a survey of a subset of government and non-governmental environmental performance standards and ecolabel

developers. Based on the results of the study and external stakeholder input, the Interagency workgroup revised the draft Guidelines.

### *C. Authorities*

EPA is issuing this notice pursuant to the authority in the Pollution Prevention Act [42 U.S.C.A. §13103(b)(11)] which requires EPA to “Identify opportunities to use Federal procurement to encourage source reduction” and Section 12(d) of the NTTAA, which requires Federal agencies to “use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities.”

### **III. Draft Guidelines**

The draft Guidelines are organized into the following four sections:

- Section I, “Guidelines for the Process for Developing Standards” addresses the procedures used to develop, maintain, and update a product environmental performance standard.
- Section II, “Guidelines for the Environmental Effectiveness of Standards” addresses the criteria in the standard or ecolabel that support the claim of environmental preferability.
- Section III, “Guidelines for Conformity Assessment” addresses the procedures and practices by which products are assessed for conformity to the criteria specified by standards and ecolabeling programs.
- Section IV, “Guidelines for Management of Ecolabeling Programs” addresses the organizational and management practices of an ecolabeling program.

EPA recognizes that the level to which sustainability practices have been incorporated varies by industry sector and even from product category to product category. Therefore, a single, one-size-fits-all approach to assessing standards and ecolabels would not be appropriate or useful. To address differences among sectors, EPA is requesting comment on an approach



that provides flexibility. For example, each draft Guideline has been designated either as “baseline” or “leadership.” Based on initial analysis, draft “baseline” Guidelines align with Federal goals and requirements, are relatively straightforward to evaluate, and are applicable across industry sectors. Draft “leadership” Guidelines represent best practices and are currently achievable by some standards and ecolabels.

Another example of the flexibilities EPA has considered arises with respect to the draft Guidelines sections addressing Conformity Assessment and Management of Ecolabeling Programs. Specifically, there may not be a marketplace need for a second or third-party conformity assessment program depending upon, among other factors, the degree of risk associated with a product’s nonconformity to the standard. In those cases, a supplier’s self-declaration of conformity would suffice. Similarly, there may not be a marketplace need for an ecolabel, depending upon the type of product and/or how it is procured. In those cases, the Guidelines for Management of Ecolabeling Programs would not apply.

The proposed draft Guidelines and supplementary information can be found at <http://www.epa.gov/epp/draftGuidelines>.

#### **IV. Pilot Program Under Consideration**

In addition to seeking input on the draft Guidelines themselves, EPA is seeking input on how standards and ecolabels should be assessed for conformance to the Guidelines if they are finalized and implemented. Based on discussions with stakeholders, EPA anticipates that a number of organizations may be positioned to respond to the need for assessment of standards and ecolabels for conformity with the Guidelines. Taking this into account, EPA is considering a limited pilot project, assuming sufficient appropriations are available, to test an assessment approach, especially with respect to Guidelines addressing the “environmental effectiveness” of a standard or ecolabel’s criteria. During this pilot, EPA expects that an external entity (or

entities) would convene and work with a multi-stakeholder panel (or panels) to develop product category-specific programs to assess conformity of standards and ecolabels with the Guidelines. The entity (or entities) would then conduct the assessments for selected product categories in a manner consistent with the International Organization for Standardization's Guides on conformity assessment, and develop a list of standards and ecolabels that conform to the Guidelines. The results from the pilot project would be made publicly available and EPA would evaluate the results to inform any future action such as making available a list of conforming standards and ecolabels for voluntary use by Federal agencies in procurement activities.

The external entity (or entities) would not perform any inherently governmental functions such as procurement policy, procurement decisions, or strategic implementation decisions.

## **V. Request for Comments**

EPA is seeking public input on the draft Guidelines and the concept of assessing non-governmental standards and ecolabels for voluntary use in Federal procurement. Recognizing that implementation of these draft Guidelines will call for additional stakeholder engagement and assessment processes, EPA also welcomes comment on the overall approach, including the potential pilot project. In particular:

1. How might the Guidelines benefit the broader marketplace?
2. Are there any draft Guidelines that should be removed or modified? Are there gaps in the draft Guidelines that could be addressed by a new Guideline(s)?
3. Are the designations of "baseline" and "leadership" in the draft Guidelines understandable? Can the designations be easily implemented? Do they appropriately reflect varying approaches in the marketplace today?

4. How should the leadership Guidelines be applied to standards and ecolabels in different product categories (e.g., different weightings in an overall conformity assessment scheme)?

5. What processes, approaches, measures, and mechanisms should be used to determine conformance with the Guidelines, if they are finalized and implemented?

6. Under what circumstances and under what authorities, if any, should the Federal Government require a particular type of conformity assessment to provide adequate confidence that the products have met a particular environmental performance standard or ecolabel?

7. Are there alternatives to the pilot project that EPA should consider?

8. If EPA were to move forward with a pilot project to test the proposed standards and ecolabels assessment approach, which product categories should be prioritized?

9. What challenges need to be addressed/resolved in implementing the proposed Guidelines in order to be a transparent, fair, and consistent process?

### **List of Subjects**

Environmental protection, government procurement, standards, ecolabels, Guidelines.

Dated: November 15, 2013.

***James Jones,***

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

*[FR Doc. 2013-28507 Filed 11/26/2013 at 8:45 am; Publication Date: 11/27/2013]*